FILED
AUG 25 1955
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 260

Detroit Stamping Company,
Petitioner,

vs.

West Point Manufacturing Company,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

HUGH K. DAVIDSON,
1852 National Bank Building
Detroit, Michigan,

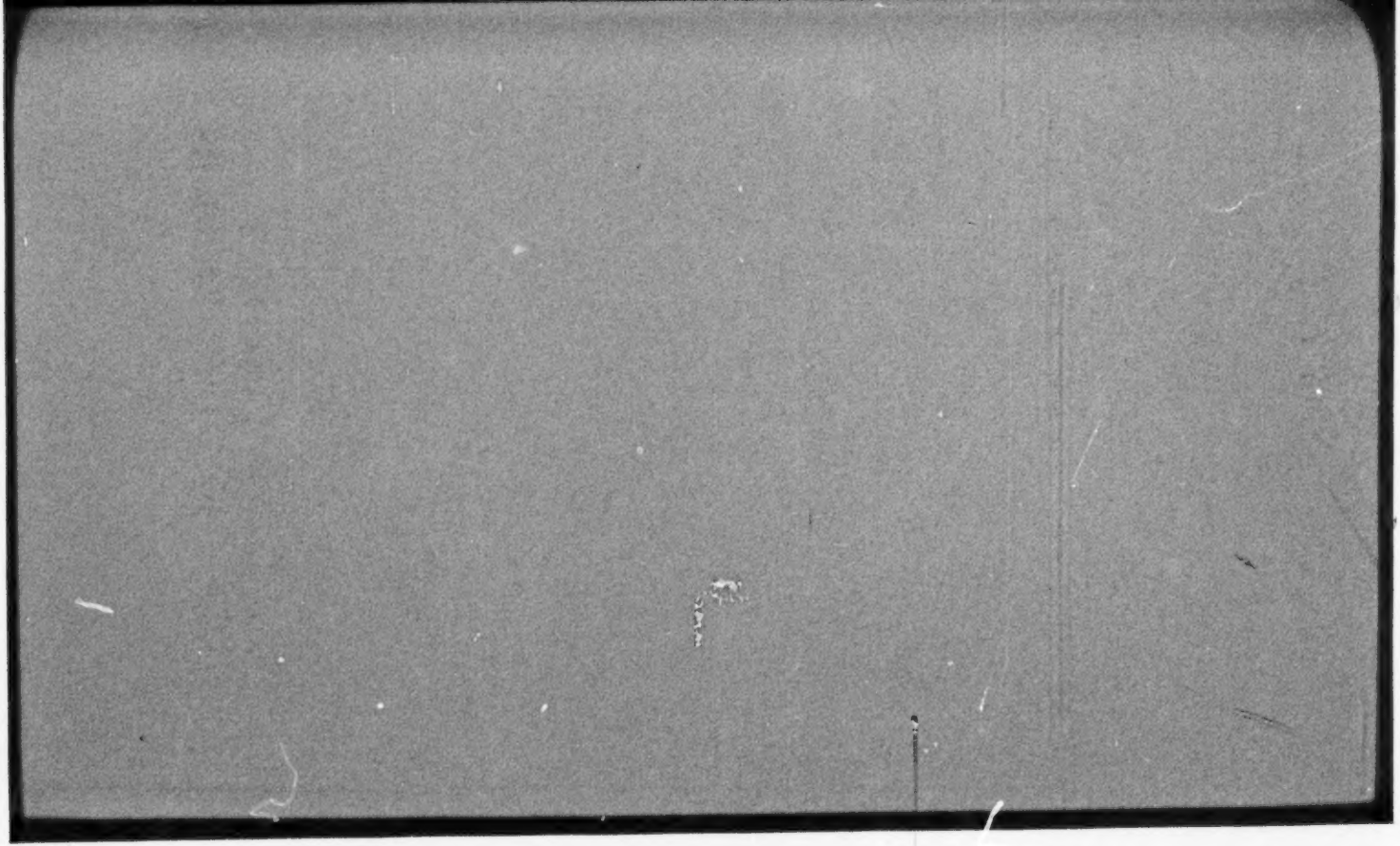
JOHN H. BURKE,
19646 Garfield,
Detroit, Michigan,

and

WARREN E. MILLER,
910 17th Street, N.W.,
Washington, D. C.,

Attorneys for Respondent.

AMERICAN BRIEF AND RECORD COMPANY, FIFTY MARKET AVENUE, N.W.,
GRAND RAPIDS 2, MICHIGAN — PHONE GL 8-5326



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 260

Detroit Stamping Company,
Petitioner,

vs.

West Point Manufacturing Company,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

The opinion of the United States Circuit Court of Appeals for the Sixth Circuit is published in 222 F. 2d at page 581, and appears in petitioner's appendix at pages 7a-41a.

JURISDICTION

Petition for rehearing was denied by order dated June 15, 1955, which order does not appear in petitioner's appendix. Petitioner invokes the jurisdiction of this court by relying upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Can petitioner obtain review by certiorari of a question of fact decided against it?

STATUTE INVOLVED

The statute which petitioner seeks to invoke here is the *Lanham Trademark Act*, Title 15 U.S.C. 1051-1127.

STATEMENT OF THE CASE

The petitioner, Detroit Stamping Company, manufactured a toggle clamp for industrial use under the protection of a patent. The patent expired and thereupon the respondent prepared to manufacture and sell the identical toggle clamp. The respondent advertised the toggle clamps which it proposed to manufacture and sell under its own distinctive trademark clearly disclosing that it, the respondent, was the maker of its clamps.

The petitioner filed suit in the District Court for an injunction to restrain the respondent from manufacturing and selling said clamps, alleging that its conduct in the premises was prohibited by the Lanham Act.[1] The District Judge entered judgment in favor of the petitioner restraining the respondent from either the manufacture or sale of said toggle clamps. The District Court based its judgment upon supposed "equitable" rights, residing in the owner after its patent had expired.

The respondent contended that all rights to manufacture the patented article became public property upon the expiration of the patent.

This case was decided on the narrow issue that at the expiration of a patent upon the petitioner's clamp it thereupon became dedicated to the public and respondent as a newcomer had the right to manufacture the product as long as it did nothing to deceive the public as to the source of the clamps manufactured, respondent being the maker of the clamps and there being no issue of confusion, deception, or "palming off" involved.

The Court of Appeals for the Sixth Circuit correctly held that the *Kellogg*[2] and *Singer*[3] cases controlled; and

---

[1] 15 U.S.C. 1051-1127.

[2] *Kellogg vs. National Biscuit Company*, 305 U. S. 111.

[3] *Singer Manufacturing Co. vs. June Manufacturing Co.*, 163 U. S. 169.

since all features of the clamp were "functional to an extent" (38a), the respondent had the right to manufacture and sell the identical clamp and to use the patented principle as embodied in the form of construction as of the date the patent expired.

The Court of Appeals also held that since the trademarks and advertisements of the respondent clearly disclosed that the respondent was the maker of the clamps which it proposed to sell, no question of confusion as to source was involved, and, therefore, no cause of action existed in favor of petitioner under the Lanham Act.

ARGUMENT

The questions considered and decided by the Court below were that the owner of a patent had no [redacted] rights in the product after the expiration of the patent and a newcomer might then manufacture it in exactly the same form; and that respondent was not guilty of palming off its goods as the goods of petitioner. The Court below held in respondent's favor in each instance. This decision was correct. In reaching it the Circuit Court of Appeals properly applied the law of this Court, following *Kellogg vs. National Biscuit Company,* 305 U. S. 111, and *Singer Manufacturing Company vs. June Manufacturing Company,* 163 U. S. 169.

The decision of the Court below is one confined to the particular facts in this case without regard to the question sought to be raised in this petition.

The Court of Appeals held that purchasers using ordinary care would not have been mistaken as to the source of the respondent's product, and the evidence that everything about the clamp was

> "functional to an extent, removes from the case the issue of imitation of nonfunctional features and 'secondary meaning' * * *" (38a).

It was very obvious to the Court of Appeals that there was no attempt to deceive or danger of deception or confusion on the part of the respondent, as it said,

> "How a purchaser exercising reasonable care could be deceived into buying a clamp plainly marked with

the name and trade-mark of appellant in the belief that it was buying appellee's clamp is beyond comprehension" (34a).

The Court below further held that:

> "Since the trade-marks and advertisements clearly disclosed that appellant was the maker of its clamps, no issue of 'secondary meaning' arises in this case * * *" (36a).

The Court below did not construe the Lanham Act as this was unnecessary in this case. Petitioner, in order to obtain a review of the decision of the Court below should not be permitted, upon the narrow issue decided in this case, to engraft hypothetical questions involving the philosophy of unfair trade legislation so as to obtain a review of decisions of other courts which are alleged to conflict with each other, but which do not conflict with this decision.

No reasons are found in the record in this case which would warrant the granting of this petition. Clearly the Court should not take jurisdiction to "supply the missing legislation" as urged by petitioner in its brief.

CONCLUSION

This petition for writ of certiorari should be denied.

HUGH K. DAVIDSON,
1852 National Bank Building,
Detroit, Michigan,

JOHN H. BURKE,
19646 Garfield,
Detroit, Michigan,

and

WARREN E. MILLER,
910 17th Street, N.W.,
Washington, D. C.,

Attorneys for Respondent.